

REMARKS/ARGUMENTS

The present communication is responsive to the Final Rejection mailed August 14, 2007 ("Final Rejection"). Claims 1-22 are pending in this application. Of these claims, claims 1, 9, and 17 are independent.

A. Claim Amendments

Claim 1 has been amended to correct its form and now recites "a patient support positioned within said gap, said patient support having three degrees of motion for positioning a patient supported thereon relative to said gap."

Claim 3 has been amended to correct a typographical error, changing the phrase "an U-shaped magnet" to read -- a U-shaped magnet --.

Claim 9 has been amended to correct its form and now recites "a patient support positioned within said receiving space, the patient support having three degrees of motion for positioning a patient supported thereon relative to said receiving space."

Claim 17 has been amended to correct its form and now recites "positioning a patient within a patient receiving space in the magnet gap on a patient support having three degrees of motion".

As is explained in further below, applicant respectfully submits that all of the amendments to the claims are to form. In any event, support for the foregoing amendments may be found by reference to, for example, paragraphs [0011], [0032], and [0037] of the specification. Applicant therefore respectfully submits that amendments to the claims do not constitute the addition of new matter to the application.

B. Applicant's Response to the Examiner's Comments

In the Final Rejection, the Examiner commented that the claim terms "capable of . . . do not impose any structural

limitations" that distinguish the claims over U.S. Pre-Grant Publication No. 2002/0123681 ("Zuk"). (Final Rejection at 2). In that regard, the applicant has amended each of the independent claims to improve their form so that they more clearly recite a proper structural limitation. In particular, independent claims 1 and 9 now recite a patient support "having three degrees of motion" for positioning the patient "relative to" the gap (receiving space) within the magnet. Similarly, independent claim 17 now recites positioning the patient within the magnet gap on a patient support "having three degrees of motion."

The Examiner also commented that since Zuk discloses that a patient is "capable of" moving while on the support in a transverse direction, that this movement constituted a second degree of motion. (Final Rejection at 2-3). Initially, applicant respectfully submits that Zuk does not disclose that the patient may move in a traverse direction while on the support. In any event, assuming *arguendo*, that Zuk included such disclosure, the claims are nonetheless distinguishable over Zuk. In particular, in the claims it is the patient support that has the three degree of motions. Therefore, regardless of how, when and what type of movement the patient may perform such movement does not constitute a degree of motion that is relevant.

The Examiner also commented that Zuk is also "capable of" three degrees of motion because one of ordinary skill in the art could move the entire reference system in Zuk, which includes the patient support, in any direction in three-dimensional space. Applicant respectfully submits that Zuk does not teach moving the entire reference system at all. In addition, one skilled in the art would clearly appreciate that moving the entire system is not recommended and is opposite to the purpose of the invention disclosed by Zuk.

More specifically, Applicant respectfully submits that

the amended claims are clearly distinguishable over Zuk in that in the claimed invention it is the patient support that moves with three degrees of motion and not the entire reference system. Indeed, Zuk is directed to an apparatus used in a surgical environment, which cannot be used in manner consistent with the Examiner's argument. Specifically, Zuk discloses an "operating table." The operating table is disclosed as being used during surgical operations, where the patient is in a supine position. (Zuk paragraph [0073].) Therefore, it is not reasonable to expect that the table would orient in any other position than the supine position, e.g., in the upright position (let alone in any direction in three-dimensional space), during such a procedure. This is particularly apropos Zuk, since he teaches operating on a patient's head.

C. Applicant's Remarks to the Claim Rejections

As noted above, the Examiner rejected all the claims. Specifically, claims 1, 9, and 14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pre-Grant Publication No. 2002/0123681 ("Zuk") (Final Rejection at 3-4). Furthermore, the Examiner indicated in the Final Rejection that the rejections set forth in the prior Official Action were maintained and reiterated in the Final Rejection. (*Id.* at 3.)

As the Examiner has not provided any new grounds of rejections, applicant incorporates by reference herein the arguments made in the Amendment filed March 2, 2007. Further, applicant respectfully submits that in view of the above amendments, the claims are clearly distinguishable over the art of record. To summarize, Zuk does not disclose a system with a patient support having three degrees of motion. Therefore, the claims are distinguishable over Zuk for at least this reason.

In view of the above, each of the presently pending claims in this application is believed to be in immediate

condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 14, 2007

Respectfully submitted,

By 

Orville R. Coekings

Registration No.: 42,424

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant